



**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R2–ES–2014–0008]**

**[4500030113]**

**RIN 1018–BA32**

**Endangered and Threatened Wildlife and Plants; 4(d) Rule for the Georgetown Salamander**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, finalize a rule under authority of section

4(d) of the Endangered Species Act of 1973, as amended, that provides measures that are necessary and advisable to provide for the conservation of the Georgetown salamander (*Eurycea naufragia*), a species that occurs in Texas. This final 4(d) rule will provide the Service the opportunity to work cooperatively, in partnership with the local community and State agencies, on conservation of the Georgetown salamander and the ecosystems on which it depends. This 4(d) rule is necessary and advisable to provide for the conservation of the Georgetown salamander because it strengthens water quality protection measures throughout the species' range, allows for consideration of new information to optimize conservation measures, and furthers conservation partnerships that can be leveraged to improve the status of the Georgetown salamander.

**DATES:** This rule is effective [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

**ADDRESSES:** This final rule, the final environmental assessment, and a list of references cited are available on the Internet at <http://www.regulations.gov> under Docket No. FWS–R2–ES–2014–0008, or by mail from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Comments and materials we received are available for public inspection at <http://www.regulations.gov>. All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd, Suite 200, Austin, TX 78758; telephone 512–490–0057; facsimile 512–490–0974. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

## **SUPPLEMENTARY INFORMATION:**

### **Previous Federal Actions**

On August 22, 2012, we published a proposed rule in the **Federal Register** (77 FR 50768) to list the Georgetown salamander (*Eurycea naufragia*), Salado salamander (*Eurycea chisholmensis*), Jollyville Plateau salamander (*Eurycea tonkawae*), and Austin blind salamander (*Eurycea waterlooensis*) as endangered species and to designate critical habitat for these species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1533 et seq.). The Federal lists of endangered and threatened species and other protective regulations for listed species under the Act are in part 17 of title 50 of the Code of Federal Regulations (CFR). On February 24, 2014, we published a final determination to list the Georgetown salamander and the Salado salamander as threatened species under the Act (79 FR 10236) and a proposed rule under section 4(d) of the Act (a proposed 4(d) rule) for the Georgetown salamander (79 FR 10077) at 50 CFR 17.43. On April 9, 2015, we revised the proposed 4(d) rule for the Georgetown salamander and reopened the public comment period for 30 days, ending May 11, 2015 (80 FR 19050). Please see the final listing determination (79 FR 10236) for additional

information concerning previous Federal actions for the Georgetown salamander.

## **Background**

The Georgetown salamander is entirely aquatic and depends on water from the Edwards Aquifer in sufficient quantity and quality to meet the species' life-history requirements for survival, growth, and reproduction. Degradation of habitat, in the form of reduced water quality and quantity and disturbance of spring sites, is the main threat to this species. For more information on the Georgetown salamander and its habitat, please refer to the February 24, 2014, final listing determination (79 FR 10236).

The Act does not specify particular prohibitions, or exceptions to those prohibitions, for threatened species. Instead, under section 4(d) of the Act, the Secretary of the Interior has the discretion to issue such regulations as she deems necessary and advisable to provide for the conservation of such species. The Secretary also has the discretion to prohibit by regulation, with respect to any threatened wildlife species, any act prohibited under section 9(a)(1) of the Act. Exercising this discretion, the Service developed general prohibitions (50 CFR 17.31) and exceptions to those prohibitions (50 CFR 17.32) under the Act that apply to most threatened wildlife species. Alternately, for other threatened species, under the authority of section 4(d) of the Act, the Service may develop specific prohibitions and exceptions that are tailored to the specific conservation needs of the species. In such cases, some of the prohibitions and authorizations under 50 CFR 17.31 and 17.32 may be appropriate for the species and incorporated into a rule under section 4(d) of the Act. However, these rules, known as 4(d)

rules, will also include provisions that are tailored to the specific conservation needs of the threatened species and may be more or less restrictive than the general provisions at 50 CFR 17.31.

### **Summary of Changes from the Revised Proposed Rule**

Based on information we received in both public comment periods on the proposed 4(d) rule (see **Summary of Comments and Recommendations**), we revised the provisions of the 4(d) rule to provide greater clarity around the activities that are covered and not covered by this rule.

### **Provisions of the 4(d) Rule for the Georgetown Salamander**

Under section 4(d) of the Act, the Secretary may publish a rule that modifies the standard protections for threatened species and that contains prohibitions tailored to the conservation of the species and that are determined to be necessary and advisable. Under this 4(d) rule, the Service provides that all of the prohibitions under 50 CFR 17.31 and 17.32 are necessary and advisable and, therefore, apply to the Georgetown salamander, except as noted below. This 4(d) rule will not remove or alter in any way the consultation requirements under section 7 of the Act.

#### *City of Georgetown Unified Development Code (UDC)*

For activities outside of habitat occupied by the Georgetown salamander, the final 4(d) rule provides that take of Georgetown salamanders that is incidental to regulated activities (as

defined in title 30, Texas Administrative Code, section 213.3(28)) that are conducted consistent with the water quality regulations contained in chapter 11.07 of the City of Georgetown Unified Development Code (UDC 11.07) (<https://udc.georgetown.org/>) will not be prohibited under the Act. The water quality regulations in UDC 11.07 were finalized on February 24, 2015. Chapter 11.07 of the UDC describes stream and spring buffers, water quality best management practices, and geologic assessments that are required for property development within the Northern Edwards Aquifer Recharge Zone and the City of Georgetown.

“Regulated activities” are defined in title 30, Texas Administrative Code, section 213.3(28) as any construction-related or post-construction activities on the Recharge Zone of the Edwards Aquifer having the potential for polluting the Edwards Aquifer and hydrologically connected surface streams. “Regulated activities” do not include the clearing of vegetation without soil disturbance, agricultural activities, oil and gas activities, routine maintenance of existing structures that does not involve additional site disturbance, and construction of single-family residences on lots larger than 2 hectares (ha) (5 acres (ac)). More specific details on spring and stream buffers can be found in sections 11.07.003A. and B. of the UDC.

When a property owner submits a development application for a regulated activity on a tract of land located over the Edwards Aquifer Recharge Zone, that individual is required to submit a geologic assessment to the City of Georgetown. The geologic assessment identifies and describes all springs and streams on any subject property, and the UDC establishes buffer zones around identified springs and streams. For springs, the buffer encompasses 50 meters (m) (164 feet (ft)) extending from the approximate center of the spring outlet that is identified in a

geologic assessment. For streams, the boundaries of the buffer must coincide with either the boundaries of the Federal Emergency Management Agency (FEMA) one percent floodplain or a calculated one percent floodplain, whichever is smaller. In the absence of a FEMA floodplain or calculated one percent floodplain, these stream buffers may be no smaller than 61 m (200 ft) wide with at least 23 m (75 ft) from the centerline of the stream. Section 11.07.003 of the UDC states that no “regulated activities” may be conducted within the spring and stream buffers.

In addition to the establishment of these spring and stream buffers, the UDC outlines water quality best management practices designed to minimize sediment runoff, increase the removal of total suspended solids, prevent an increase in flow rates, and ensure spill containment for new or expanded roadways. These regulations in chapter 11.07 of the UDC are designed to reduce water quality degradation that may occur as a result of development. By reducing further water quality degradation that may result from development, these protective measures are also expected to reduce degradation to Georgetown salamander habitat that may occur.

The UDC 11.07 also outlines exemptions from the requirement to prepare a geologic assessment, the process by which a landowner may request a variance to the spring and stream buffer requirements, and exemptions to the spring and stream buffer requirements of section 11.07.003. Small (less than 2-ha (5-ac)) single-family and two-family residential developments are exempt from submitting a geologic assessment; however, these developments are required to implement UDC water quality measures. Landowners may request to the City of Georgetown a variance from the spring and stream buffer requirements in UDC 11.07 if: The variance is

not contrary to the public interest; due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship; and the spirit of the ordinance is observed and substantial justice is done, in accordance with UDC section 2.05.010.A.6. These variances and exemptions apply only to sites not occupied by Georgetown salamanders.

Properties with a site occupied by the Georgetown salamander are exempt from the spring and stream buffer requirements in chapter 11.07. Rather, UDC Appendix A outlines conservation measures (which are voluntary under the UDC) to be implemented when undertaking regulated activities that occur on a tract of land with an occupied site or within 984 ft (300 m) of an occupied site. An “occupied site” is defined in the UDC as any spring identified as a critical habitat unit by the Service for the Georgetown salamander and includes the following sites: Cobb Well, Cobb Springs, Cowen Creek Spring, Bat Well Cave, Walnut Spring, Twin Spring, Hogg Hollow Spring, Cedar Hollow Spring, Knight (Crockett Garden) Spring, Cedar Breaks Hiking Trail Spring, Water Tank Cave, Avant’s (Capitol Aggregates), Buford Hollow Springs, Swinbank Spring, Shadow Canyon, San Gabriel Spring, and Garey Ranch Springs. For the purposes of this 4(d) rule, however, we define an occupied site to be any site where Georgetown salamanders have been found in the past or new sites found in the future.

For activities involving habitat occupied by the Georgetown salamander, the final 4(d) rule provides that take of the Georgetown salamander that is incidental to regulated activities that are conducted consistent with the guidelines described in Appendix A of the UDC will not be prohibited under the Act. Similar to chapter 11.07 of the UDC, the guidelines in Appendix A establish stream and spring buffers and allowable activities within those buffers; however, the

measures described in Appendix A create larger, more protective buffers than those that appear in chapter 11 for unoccupied sites. First, Appendix A establishes a “No-Disturbance Zone” in the stream or waterway into which a spring drains directly; this zone extends 80 m (264 ft) upstream and downstream from the approximate center of the spring outlet of an occupied site and is bounded by the top of the bank. No regulated activities may occur within the “No-Disturbance Zone.” In addition, Appendix A establishes a “Minimal-Disturbance Zone” for the subsurface area that drains to the spring(s) at an occupied site; this zone consists of the area within 300 m (984 ft) of the approximate center of the spring outlet of an occupied site, except those areas within the “No-Disturbance Zone.” Most regulated activities are also prohibited in the “Minimal-Disturbance Zone,” but single-family developments, limited parks and open space development, and wastewater infrastructure will be allowed. For additional details on the buffers around occupied sites and prohibited actions, please refer to the UDC Appendix A.

In general, this 4(d) rule does not apply to deviations from the water quality measures in UDC 11.07 and Appendix A. Any variance from the measures and guidelines described in UDC 11.07 (non-occupied sites) is not covered by this final 4(d) rule, unless that variance has been granted by the City of Georgetown. In addition, variances from the spring and stream buffer requirements of UDC 11.07 may be granted by the City of Georgetown only if the variance is not contrary to the public interest, if due to special conditions a literal enforcement of the ordinance would result in unnecessary hardship, and if the spirit of the ordinance is observed and substantial justice is done, in accordance with UDC section 2.05.010.A.6. Projects involving habitat occupied by the Georgetown salamander (which are not eligible for variances) where the project proponent chooses not to follow the voluntary guidelines in Appendix A of the

UDC, may work with the Service to pursue take coverage by developing a habitat conservation plan (HCP) in accordance with section 10 of the Act.

Section 11.07.008 of the UDC also establishes an Adaptive Management Working Group (Working Group) that is responsible for reviewing data on a regular basis and making recommendations for specific changes in the management directions related to the voluntary conservation measures for occupied sites in Appendix A. Adaptive management for preservation of the Georgetown salamander is one of the duties tasked to the Working Group. The adaptive management described in the UDC specifically applies to the guidelines (i.e., conservation measures) found in Appendix A; therefore, the guidelines described in Appendix A may change over time if they would result in equal or better conservation benefits to the Georgetown salamander, as determined by the Service. For example, if experience gained during implementation of the guidelines or new scientific information suggests that a buffer distance was either too small, or larger than needed, to achieve the intended benefits, that buffer distance could be modified. However, the activities covered under Appendix A (i.e., regulated activities) are not subject to change under the adaptive management provisions described in the UDC. In other words, exercising of adaptive management under this 4(d) rule cannot expand the scope of the covered activities beyond regulated activities (as defined in title 30, Texas Administrative Code, section 213.3(28)). The Working Group will develop an annual report regarding the preservation of the Georgetown salamander, continuous monitoring of the Georgetown salamander, assessment of research priorities, and the effectiveness of the water quality regulations and guidelines. Copies of the February 24, 2015, dated UDC 11.07 and Appendix A are available at <http://www.regulations.gov> at Docket No. FWS–R2–ES–2014–

0008. Any revisions to Appendix A will be made available at <https://udc.georgetown.org/udc-amendments/>.

## **Determination**

Section 4(d) of the Act states that “the Secretary shall issue such regulations as [s]he deems necessary and advisable to provide for the conservation” of species listed as threatened species. Conservation is defined in the Act to mean “to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.”

The courts have recognized the extent of the Secretary’s discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, the Secretary may find that it is necessary and advisable not to include a taking prohibition, or to include a limited taking prohibition. See *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, and 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002). In addition, as affirmed in *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988), the rule need not address all the threats to the species. As noted by Congress when the Act was initially enacted, “once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him [her] with regard to the permitted activities for those species. [S]he may, for example, permit taking, but not importation of such species,” or she may choose to forbid both taking and importation but allow the transportation of such species, as long as the prohibitions, and

exceptions to those prohibitions, will “serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act” (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Section 9 prohibitions make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as an endangered species, without written authorization. It also is illegal under section 9(a)(1) of the Act to possess, sell, deliver, carry, transport, or ship any such wildlife that is taken illegally. Prohibited actions consistent with section 9 of the Act are outlined for threatened wildlife in 50 CFR 17.31(a) and (b). For the Georgetown salamander, the Service has determined that a 4(d) rule tailored to its specific conservation needs is necessary and advisable, as discussed below. This final 4(d) rule provides that all prohibitions in 50 CFR 17.31(a) and (b) will apply to the Georgetown salamander, except as described below.

Under this final 4(d) rule, incidental take of the Georgetown salamander will not be considered a violation of section 9 of the Act if the take occurs on any non-Federal land and from regulated activities that are conducted consistent with the water quality protection measures contained in chapter 11.07 and Appendix A of the City of Georgetown Unified Development Code. This final 4(d) rule refers to the definition of “regulated activities” in title 30, Texas Administrative Code, section 213.3(28), which is any construction-related or post-construction activities on the recharge zone of the Edwards Aquifer having the potential for

polluting the Edwards Aquifer and hydrologically connected surface streams. We have determined that this provision is necessary and advisable for the conservation of the Georgetown salamander, as explained in the paragraphs that follow.

The local community in the City of Georgetown and Williamson County has expressed a desire to design and implement a local solution to conserving the natural resources in their county, including water quality and the Georgetown salamander (City of Georgetown Resolution No. 082812–N). All currently known locations for the Georgetown salamander are within the jurisdiction of the City of Georgetown, making the city an appropriate entity to manage conservation measures that protect Georgetown salamander habitat. Because impervious cover levels within most of the watersheds known to be occupied by the Georgetown salamander are still relatively low, a window of opportunity exists to design and implement measures to protect water quality and, therefore, conserve the salamander. The City and County’s approach for accomplishing this conservation goal includes regulatory and non-regulatory actions, as described below. Regulatory actions include passage of the Edwards Aquifer Recharge Zone Water Quality Ordinance (Ordinance No. 2013–59) by the Georgetown City Council on December 20, 2013, and the revisions to their UDC (chapter 11.07) finalized on February 24, 2015. Their approach also includes non-regulatory actions, such as the technical guidance provided in Appendix A of the UDC, which outlines additional conservation measures to protect water quality and to avoid direct destruction of occupied sites.

Habitat modification, in the form of degraded water quality and quantity and disturbance

of spring sites, is the primary threat to the Georgetown salamander. The conservation measures in both chapter 11.07 and Appendix A of the UDC provide a variety of water quality protection measures, such as the creation of buffers around springs and streams where regulated activities are prohibited, designed to lessen impacts to the water quality of springs and streams in the Edwards Aquifer Recharge Zone. The UDC is applied throughout the watersheds that contain the Georgetown salamander. Absent this 4(d) rule, the status quo would be to address development impacts through traditional tools (that is, sections 7 and 10 of the Act) that are generally applied at the project-by-project scale. The watershed-level approach in UDC 11.07 and Appendix A works to avoid incremental environmental degradation that may go unnoticed on a small, individual project scale. Through this final 4(d) rule, we can achieve a greater level of conservation for the Georgetown salamander than we could without it because it encourages rangewide implementation of water quality protective measures that are aimed at addressing the primary threat of habitat modification and degradation for Georgetown salamanders. The majority of Georgetown salamanders occur within 164 ft (50 m) of a spring outlet (Pierce *et al.* 2010, p. 294; TPWD 2011, p. 3); this coincides with the spring and stream buffers for unoccupied sites. We also believe the salamander populations exist through underground conduits that may extend 300 m (984 ft) around cave or spring points; this area coincides with the size of the “Minimal-Disturbance Zones” for occupied sites. By limiting development activities within these respective areas, the measures in the UDC 11.07 and Appendix A are expected to limit water quality degradation in areas that may provide suitable surface or subsurface habitat for the Georgetown salamander now and in the future.

Although the areas that provide recharge and the source water for specific areas occupied

by the salamander have not been precisely delineated, the watershed-level approach makes it likely that unknown recharge areas are receiving water quality protection under the UDC. This is because the UDC prohibits regulated activities within buffers around all streams located within the recharge zone and the City of Georgetown jurisdiction. In karst aquifer systems, streams often contain important recharge features called swallow holes or swallets, which allow the stream to continue flowing underground in a conduit and feed the larger aquifer or even small springs directly (White 1998, p. 172). For example, in the Barton Springs Segment of the Edwards Aquifer, hydrologists generally agree that most of the aquifer's recharge comes via these streambed recharge features (Mahler *et al.* 2011, p. 4). Although similar research is lacking in the Northern Segment of the Edwards Aquifer, it is likely that the aquifer feeding Georgetown salamander habitat works in a similar way because both areas are karst aquifer systems, thereby making the stream buffers of the UDC crucial in protecting groundwater quality.

This watershed-level approach also includes an adaptive management component that will allow the Adaptive Management Working Group (Working Group) to evaluate the response of salamander populations to management actions and quickly respond and recommend adjustments, if necessary, to management strategies to protect water quality consistent with conserving the Georgetown salamander. The UDC formalizes the Working Group with representatives from the City of Georgetown, Williamson County, Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, university scientists, private real estate developers, and the Service. The role of the Working Group is to:

- Review scientific information to understand the latest science on watershed

management practices and the conservation of the Georgetown salamander;

- Recommend support for additional Georgetown salamander scientific studies and oversee a long-term monitoring program to ensure that salamander abundance at monitored locations is stable or improving;
- Conduct and evaluate water quality trend analysis as part of its long-term monitoring program to ensure water quality conditions do not decline and, in turn, result in impacts to salamander abundance; and
- Develop recommendations for changes to the UDC Appendix A for occupied sites if scientific and monitoring information indicates that water quality and salamander protection measures need changes to minimize impacts to salamander populations and to help attain the goal of species conservation.

While a window of opportunity exists to design and implement conservation measures to conserve the Georgetown salamander, human population levels and development are expected to increase rapidly in Williamson County (Texas State Data Center 2012, pp. 166–167). The success of the local community’s efforts depends on their robust adaptive management program. The program is designed to monitor and quickly assess the effectiveness of the identified conservation measures and strategies and to be able to respond quickly and adapt the conservation measures and strategies to provide equal or better conservation benefits to the Georgetown salamander. The adaptive management approach will ensure that the water quality protective measures are serving their intended purpose of conserving the Georgetown salamander, thereby providing for the conservation of the species. Changes to UDC Appendix A that are agreed upon by the Working Group through the adaptive management process,

provide equal or greater conservation benefits to the Georgetown salamander, and approved by the Service would be covered under this 4(d) rule.

By not prohibiting incidental take resulting from regulated activities conducted in accordance with the UDC 11.07 and Appendix A, the Service is supporting and encouraging a local solution to conservation of the Georgetown salamander. This final 4(d) rule will provide the Service the opportunity to work cooperatively, in partnership with the local community and State agencies, on conservation of the Georgetown salamander and the ecosystems on which it depends. Leveraging our conservation capacity with that of the State, local governments, and the conservation community at large may make it possible to attain biological outcomes larger than those we could attain ourselves due to the watershed-scale protection the UDC requires. Further, our local partners are best able to design solutions that minimize socioeconomic impacts, thereby encouraging participation in measures that will protect water quality and conserve the Georgetown salamander. In addition, by not prohibiting incidental take resulting from regulated activities conducted in accordance with UDC 11.07 and Appendix A, the Service is providing a streamlining mechanism for compliance with the Act for those project proponents who comply with the protective measures in UDC 11.07 and Appendix A and, thus, are considered covered by this final 4(d) rule. Project proponents who comply with these protective measures, as outlined in this final rule, can implement their projects without any potential delay from seeking incidental take coverage from the Service, while also minimizing water quality degradation. This approach provides greater regulatory certainty and streamlines compliance for project proponents and thus is likely to result in increased implementation of water quality protective measures that benefit salamanders.

In summary, this 4(d) rule is necessary and advisable to provide for the conservation of the Georgetown salamander because it strengthens water quality protection measures throughout the species' range, allows for consideration of new information to optimize conservation measures, and furthers conservation partnerships that can be leveraged to improve the status of the Georgetown salamander. Implementation of water quality protection measures throughout the range of the species will provide greater protection for the species than would project-by-project efforts, and provide protections to recharge areas that we may not be able to protect under our traditional tools (e.g., sections 7 and 10 of the Act). Further, water quality protection is a crucial element of conservation for the Georgetown salamander. Because the best available information does not allow us to determine the exact amount of water quality protection needed to satisfy the life requirements of the Georgetown salamander, the adaptive management approach incorporated into UDC Appendix A provides a pathway to achieving our conservation goals for the species in the face of scientific uncertainty. Finally, this approach also encourages further cooperation between the Service and local government entities, enhancing our ability to work collaboratively with partners to further Georgetown salamander conservation.

If an activity that may affect the species is not regulated by UDC 11.07 or is not in accordance with UDC 11.07 and Appendix A, or a person or entity is not in compliance with all terms and conditions of UDC 11.07 and Appendix A and the activity would result in an act that would be otherwise prohibited under 50 CFR 17.31, then the general provisions of 50 CFR 17.31 and 17.32 for threatened species apply. In such circumstances, the prohibitions of 50 CFR 17.31 would be in effect, and authorization under 50 CFR 17.32 would be required. In addition,

nothing in this 4(d) rule affects in any way other provisions of the Act, such as the designation of critical habitat under section 4, recovery planning provisions of section 4(f), and consultation requirements under section 7.

## **Summary of Comments and Recommendations**

We requested written comments from the public on the proposed 4(d) rule for the Georgetown salamander during two comment periods: February 24 to April 25, 2014, and April 9 to May 11, 2015. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed 4(d) rule, draft environmental assessment, and chapter 11.07 and Appendix A of the UDC during the respective comment periods.

Over the course of the two comment periods, we received 39 comment submissions. All substantive information provided during these comment periods has either been incorporated directly into this final rule or is addressed below. Comments from peer reviewers and State agencies are grouped separately.

### *Peer Review Comments*

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from five knowledgeable individuals with scientific expertise that are familiar with the species, the geographic region in which the species occurs, and conservation

biology principles. We received responses from two of the five peer reviewers. We reviewed all comments received from the peer reviewers for substantive issues and new information. These comments are addressed in the following summary and incorporated into the final rule as appropriate.

(1) *Comment:* An additional buffer specifically associated with where Georgetown salamanders are found, to minimize direct impacts by people (and domestic pets), is critical. Fencing is often an effective way to mark the boundaries (and potentially reduce their footprint) of such a protective buffer.

*Our response:* We agree that additional measures to protect Georgetown salamanders from the threat of trampling by people, pets, feral hogs, and livestock may contribute to the conservation of the species. However, as noted above, this 4(d) rule does not provide incidental take authority for all types of activities that may constitute take or harm of Georgetown salamanders. Rather, the 4(d) rule will promote the conservation of the species by helping to alleviate negative impacts that can occur from the threat of water quality degradation as a result of urbanization.

(2) *Comment:* I am uncertain as to whether the fixed-width buffers are appropriate in all localities to achieve the desired level of protection. Protection of surface and groundwater resources in karstified area can be quite challenging, and, therefore, simplified metrics such as horizontal setbacks may not achieve the desired results. Adequate buffers would require an understanding of both the detailed hydrogeology and the dispersal patterns of the listed species.

For the former, I would expect that areas upgradient of springs (a more immediate source of recharge) would be more important than downgradient areas, all else being equal, to the maintenance of adequate springflow. For the latter, I would expect that downgradient areas (where the emergent surface water flows) would be more important than upgradient areas for the direct support of habitat. How these two attributes interact to define a truly “critical” area of influence is undoubtedly complex, and a fixed-width buffer may be the best alternative at the present time. However, I would hope that improved understanding of these interactions would be a focus of the adaptive management effort.

*Our response:* We agree and expect that improving the understanding of the detailed hydrogeology and dispersal patterns of the species will be a focus of the Working Group. Please see our response to *Comment #8*.

(3) *Comment:* The stormwater-management requirements for protection of the Edwards Aquifer (UDC) are laudable, but they lag behind the current understanding, and readily available applications, of what constitutes stormwater “best management practices” of the 21<sup>st</sup> century. Particularly given the importance of maintaining aquifer recharge, I would expect to see on-site retention of the 95th percentile storm (as is already mandated for federal facilities) rather than just 85 percent reduction in total suspended solids.

*Our response:* Because the on-site retention of the 95th percentile storm is a different type of stormwater measurement than 85 percent reduction in total suspended solids, it is difficult to compare the two in terms of water quality protection. However, we recognize that

there may be more stringent water quality regulations that aim to remove more contaminants from stormwater runoff than the UDC. The adaptive management process will monitor the status of the species in response to implementation of the UDC and modify the regulations if more protective measures are needed to further reduce impacts to the species. At this time, we have determined that the UDC and Appendix A, which include the 85 percent reduction, are necessary and advisable for the conservation of the species (see **Determination** section above).

(4) *Comment:* I recommend that there should be no exemptions to the water quality regulations. Every proposed change in land use should have some form of review to ensure compatibility with management goals.

*Our response:* In general, deviations from the water quality regulations described in UDC 11.07 and the voluntary guidelines described in Appendix A of the UDC will not be covered under this 4(d) rule. Non-regulated activities, for example, are exempt from UDC 11.07 and are, therefore, not covered under this 4(d) rule. However, variances from UDC 11.07 may be granted by the City of Georgetown in special circumstances. These variances from the spring and stream buffer requirements apply only to non-occupied sites and undergo review by the City of Georgetown staff and may be granted only if the variance is not contrary to the public interest, due to special conditions a literal enforcement of this regulation would result in unnecessary hardship, and the spirit of the regulation is observed and substantial justice is done, in accordance with UDC Section 2.05.010.A.6. No variances to Appendix A, which covers all occupied sites, of the UDC will be covered under this 4(d) rule. Individual variances to UDC 11.07 that have been approved by the City of Georgetown can be tracked by the Working Group

and incorporated into their discussions and recommendations on the adaptive management needed to attain conservation goals.

(5) *Comment:* Geologic and soil studies should be performed by the community to delineate locations where shallow soil cover prevents conventional onsite wastewater disposal. Green infrastructure and low-impact development should be required everywhere in Georgetown, Texas. This includes new development, redevelopment, and restoration projects.

*Our response:* We agree that groundwater vulnerability studies and low-impact development will be beneficial for the Georgetown salamander and its habitat. These are helpful suggestions for the Working Group to consider as they evaluate the effectiveness of the UDC conservation measures.

(6) *Comment:* The community should track water quality and flow at selected springs and streams in order to develop long-term databases able to detect changes.

*Our response:* We agree that water quality and quantity monitoring conducted in a manner that is able to detect changes needs to be a priority for the Working Group. Williamson County is currently monitoring salamander abundance and basic water chemistry (for example, temperature, dissolved oxygen, and specific conductance) at three sites with plans to add more monitoring sites in the future.

*Comments from States*

(7) *Comment:* We urge the Service to finalize and implement this proposed rule as efficiently as possible while following a transparent process in order to provide regulatory certainty.

*Our response:* By requesting input from the public on this 4(d) rule during two public comment periods, one 60-day and a second 30-day, we believe the rulemaking process has been transparent.

(8) *Comment:* Spring buffers and other water quality protection policies should be aligned with the hydrogeology that most directly influences conditions for the species' survival. It also appears that the current buffer strategy may unduly restrict landowners in some areas that do not influence survival conditions for the species while potentially not affording protection to other areas that do influence survival conditions. We believe the proposed rule affords the [Adaptive Management] Working Group the latitude to study these spring buffers and offer alternative recommendations if new science dictates that changes should be made.

*Our response:* The specific hydrogeology (for example, recharge area) for each site occupied by the Georgetown salamander has not been determined. The Act requires that we use the best available information and does not require that we conduct research to develop new science. In the absence of this information, we believe a fixed-width buffer is the best alternative for protecting these sites. As new information is discovered, the conservation measures can be modified through the adaptive management process.

(9) *Comment:* Conservation measures detailed in the UDC are limited to “Occupied Sites” with currently known populations. Conservation measures would not apply to newly discovered occupied sites. Since newly discovered sites could be important to the recovery of the species, we request that the Service clarify the applicability of the 4(d) rule to these sites and the role the Working Group should play in this regard.

*Our response:* In this final rule, we have clarified that any site determined to be occupied by Georgetown salamanders in the future will be considered “occupied” and the protective measures outlined in Appendix A of the UDC must be followed in order to be covered under this 4(d) rule. We recommend that the Working Group make efforts to survey suitable habitat within the range of the Georgetown salamander to identify all sites occupied by the species.

(10) *Comment:* It is unclear whether a landowner owning a newly discovered site occupied by Georgetown salamanders outside the City of Georgetown’s extra-territorial jurisdiction would be covered for incidental take if [s]he were to conduct activities consistent with the conservation measures contained in the UDC. Regulatory predictability and incidental take coverage for all affected landowners are important for the ultimate recovery of the species.

*Our response:* Regulated activities located outside of the City of Georgetown’s jurisdiction are not covered by the UDC. Therefore, only incidental take from those activities that are in the City of Georgetown’s jurisdiction are potentially exempt from take prohibitions

through this 4(d) rule. All currently known Georgetown salamander sites are covered by the UDC.

#### *Public Comments*

(11) *Comment:* The proposed revised 4(d) rule states that the boundaries of the stream buffer coincides with the boundaries of the FEMA or calculated floodplain, but may be no smaller than [61 m (200 ft)] in width. It should be noted that, while the stream buffer varies depending on the size of the stream (size of the stream is based on the size of the drainage area, which influences the size of the floodplain), there may be situations under the UDC where the stream buffer is smaller than [61 m (200 ft)] in width.

*Our response:* Per the UDC 11.07, only stream buffers without FEMA or calculated floodplains may be no smaller than 61 m (200 ft) in width. We have made the appropriate clarification in this final rule.

(12) *Comment:* The proposed exemption from prohibitions, as it will be outlined in § 17.43(e)(2) of [title 50 of] the CFR, states that “incidental take of the Georgetown salamander will not be considered a violation of section 9 of the Act if the take occurs on privately owned, State, or county land....” This exemption must include, at a minimum, city-owned property.

*Our response:* We have edited the exemption to include all non-Federal land.

(13) *Comment:* The proposed rule, if finalized, could not be amended substantially unless and until the Service allowed for public comment and input. Public input would not be allowed to a greater degree in connection with an incidental take permit than it has been in connection with the proposed rule.

*Our response:* This is correct. Future changes to the content of this 4(d) rule require a public notice and comment period. However, future changes related to the conservation of the Georgetown salamander may be made to the conservation measures in UDC Appendix A, without public notice and comment, if they are agreed upon by the Working Group through the adaptive management process outlined in the UDC, provide equal or greater conservation benefits to the Georgetown salamander, and are approved by the Service.

(14) *Comment:* The proposed rule does not exempt any set of activities in the “red zone.” The proposed rule does not pick apart who is regulated or not. Rather, it focuses on actual implementation of water quality measures consistent with those set forth in the UDC and listed in the proposed rule. A non-regulated entity can presumably meet the standard set forth in the proposed rule, not because such an activity is exempt from regulations, but because it would have affirmatively implemented the water quality measure set forth in the proposed rule and UDC. While it is true that the UDC applies only to regulated activities, the exemption from take in the proposed rule applies to all activities (and only those activities), regulated or not, that are consistent with the conservation measures in the UDC; that is, activities for which the project proponent has performed a geologic assessment, abided by the limitations described in the UDC

for no-disturbance and minimal-disturbance zones, established buffers around springs and streams, etc.

*Our response:* The UDC 11.07 and Appendix A were specifically designed for regulated activities. Other kinds of non-regulated activities could have different impacts not addressed with this set of measures. Non-regulated activities that voluntarily follow the UDC 11.07 or Appendix A are not covered by this final 4(d) rule, and project proponents may choose to work with the Service to obtain take coverage.

(15) *Comment:* The Service should permit take under section 10 rather than adopt a special 4(d) rule because the resulting HCP cannot be weakened through amendment (unlike the City of Georgetown UDC), the section 10 process provides greater protections for the salamanders compared to the City of Georgetown UDC, and the process provides an open process in which the public can be involved.

*Our response:* Section 10 permits are voluntary, are tailored towards individual applicants, would only cover known occupied sites, and have different criteria for permit issuance than the Act requires for issuance of a 4(d) rule. It is not certain that the Service would receive applications for section 10 permits that would provide greater protections for the Georgetown salamander over the entire range of the species. The 4(d) rule provides a landscape-level approach that is consistently implemented throughout the range of the Georgetown salamander, including unoccupied sites.

While it is true that the conservation measures in UDC Appendix A may be revised, those changes would not be covered under this 4(d) rule unless they are agreed upon by the Working Group through the adaptive management process outlined in the UDC, provide equal or greater conservation benefits to the Georgetown salamander, and are approved by the Service. In addition, we have a “No Surprises” policy for section 10 incidental take permits, which states, if unforeseen circumstances occur during the life of an HCP, the Service will not require additional lands, additional funds, or additional restrictions on lands or other natural resources released for development or use, from any permittee, who in good faith is adequately implementing or has implemented an approved HCP. This policy makes HCPs less flexible in terms of requiring more stringent conservation measures over time in response to new information. Given the amount of uncertainty in how best to protect Georgetown salamander habitat quality at individual sites, the flexibility provided in the adaptive management approach of the UDC is desirable.

We believe the development of this 4(d) rule has been an open process comparable to that of a section 10 permit process. In addition, the process of amending the UDC is very transparent, involving monthly meetings of the Unified Development Code Advisory Committee that are open to the public with minutes and agendas posted online (<https://government.georgetown.org/unified-development-code-advisory-board-2/>).

(16) *Comment:* The 4(d) rule allows degradation of water quality and, therefore, is not necessary and advisable for the conservation of the Georgetown salamander.

*Our response:* The protective measures provided for in the 4(d) rule are intended to address the threat of water quality degradation from urbanization throughout the range of the species. We have found that the 4(d) rule positively contributes to the recovery of the Georgetown salamander by addressing the primary threat to the species and that these measures are “necessary and advisable for the conservation” of the Georgetown salamander (see **Determination** section above).

(17) *Comment:* Numerous activities that may degrade water quality are entirely exempted and, therefore, allowed within the zones and buffers described in the City of Georgetown UDC. The Service should exempt only “regulated activities” because those are the only activities that are actually regulated by the UDC. In this way, threats such as oil and gas activities, agricultural operations, and residential developments on lots greater than 2 ha (5 ac), which are currently unregulated and, therefore, do not contribute to the conservation of the salamander, would not receive the benefit of protection from incidental take.

*Our response:* We agree and have clarified this issue in the final 4(d) rule. Also, please see our response to *Comment #14*.

(18) *Comment:* Because the proposed special rule references the Ordinance instead of prescribing all the necessary conservation measures, the City could receive the benefits of protection from section 9 even if the City weakens the Ordinance through amendment. To solve this problem, the Service must use the section 10 process, describe all the necessary conservation measures in the Ordinance, or modify the 4(d) rule to state on its face what is and what is not

authorized. At a bare minimum, the agency must specifically reference the version of the Ordinance adopted on December 20, 2013.

*Our response:* The final rule clarifies that modifications to UDC Appendix A are covered under the 4(d) rule only if they are agreed upon by the Working Group through the adaptive management process, provide equal or greater conservation benefits to the Georgetown salamander, and are approved by the Service. In order to allow this important adaptive management process to be implemented, we have revised the final 4(d) rule to note that the provisions apply only to Service-endorsed versions of UDC 11.07 and Appendix A.

(19) *Comment:* It concerns us that the proposed 4(d) special rule is proceeding without scientific peer review.

*Our response:* Although our February 24, 2014, proposed 4(d) rule announced that we were not conducting a peer review, we did conduct a peer review of the proposed 4(d) rule during the second comment period (April 9, 2015, to May 11, 2015). We requested peer review from five water quality protection experts and received reviews from two of the five. The peer reviews, along with the other comments and materials we received, are available on the Internet at <http://www.regulations.gov> under Docket No. FWS–R2–ES–2014–0008.

(20) *Comment:* The UDC will not protect the quantity of spring flows or threats to water quality from points more distant than 50–300 m (164–984 ft) from spring sites. The UDC on which the proposed 4(d) rule is based does not adequately protect groundwater quality, including

recharge features, caves, conduits, or local aquifers. The only substantive contribution made by the UDC is to decrease the probability of wholesale destruction by physical disturbance of occupied springs, but that is just one of many threats to the species.

*Our response:* We believe the regulations in the UDC provide some protections to recharge features and water quality in the aquifer as a whole, primarily through the required stream buffers. Although the UDC addresses water quality, regulating every threat to the species is outside the scope of the UDC. In addition, as affirmed in *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988), the rule need not address all the threats to the species. Activities that are not covered by this 4(d) rule and that may result in take to the species would need to be covered through sections 7 or 10 of the Act.

(21) *Comment:* The UDC does not specify whether any new population discoveries in the future will be treated as “Edwards Springs” with a 50-m (164-ft) buffer or as occupied sites with a 300-m (984-ft) buffer. Furthermore, the UDC does not require population surveys for salamander presence in currently occupied sites or at sites that are currently thought to be unoccupied. Therefore, it provides zero protection for spring sites that are determined in the future to be occupied by salamanders.

*Our response:* We have clarified in the final 4(d) rule that any site determined to be occupied by Georgetown salamanders in the future will be considered “occupied” and require the protective measures outlined in Appendix A of the UDC to be covered under this 4(d) rule.

(22) *Comment:* Under the 4(d) rule, the Service should allow the City of Georgetown to conduct all technical reviews related to compliance with the UDC, including review and approval of subdivision plats, site plans, or other plans to be in compliance with the UDC. The UDC already requires that all development within the salamanders' known distribution may not begin until a geologic assessment has been conducted and accepted by the City and all project plats, site plans, and infrastructure construction plans reflect occupied springs and required buffers. The City of Georgetown is the logical entity to conduct this review under the UDC, as City staff are the most knowledgeable about local codes, ordinances, and environmental conditions and will ensure technical reviews comply with the UDC.

*Our response:* The City of Georgetown will implement and enforce the regulations in chapter 11.07 of the UDC. The City, with assistance of the Working Group (comprising representatives from the City of Georgetown, Williamson County, Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, university scientists, private real estate developers, and the Service), will also review and approve projects that wish to follow the guidelines described in Appendix A of the UDC. The Service has no intention of reviewing individual projects unless the developers wish to obtain an incidental take permit through section 10, or if a Federal nexus exists through section 7, instead of following the UDC.

(23) *Comment:* The required buffers will not infringe too seriously on Georgetown residents. The "Minimal-Disturbance Zone" will allow those who wish to live near rivers and springs that are the salamander's habitats to do so, as long as the residential areas are low density. Recreational activities like fishing or boating would not be severely limited either, as

the “No-Disturbance Zone” on the river stretches only [80 m (262 ft)] in either direction. This is a significant buffer for the salamander, but it is not a far distance for humans to traverse.

*Our response:* The “No-Disturbance Zone” of Appendix A of the UDC does not apply to recreation activities. Only regulated activities (as defined in title 30, Texas Administrative Code, section 213.3(28)) are prohibited within this zone.

(24) *Comment:* Stream buffers of at least 23 m (75 ft) may not be large enough to considerably reduce water pollution. Salamanders are affected by slight changes in pH and increase of chemicals in the water. The small population sizes of Georgetown salamanders greatly increase their risk of extinction. Therefore, more studies on the biology and population demographics of this species should be performed before additional urban development is allowed near these crucial habitat sites.

*Our response:* The adaptive management process is a component of chapter 11.07 and Appendix A of the UDC that allows changes to the regulations in response to new information. If there is adequate evidence that the current regulations are not protective enough for the Georgetown salamander, the Working Group will recommend changes to the UDC that meet the overall management goals.

(25) *Comment:* This plan essentially provides a loophole for developers to continue construction if they survey the area themselves. There is no outside authority to check if

salamander habitat will be disturbed. This could potentially allow for corrupt results of the investigation to be passed off as legitimate.

*Our response:* This 4(d) rule does not provide a loophole, because all individual project proponents continue to be responsible for determining impacts on listed species and seeking the appropriate take coverage based on their determination.

(26) *Comment:* If the development is single-family residential, two-family residential, or on a lot smaller than 2 ha (5 ac), the assessment from the Federal Government would be waived. Any construction, no matter how small it may be, will have an impact on the environment.

*Our response:* There is no Federal Government assessment that would be waived from residential developments. Geologic assessments (which have to be completed under the UDC 11.07 regulations) are not required to be submitted to the City of Georgetown if the proposed development is a small (less than 2-ha (5-ac)) single-family and two-family residential development located in a small (25.9-ha (64-ac)) watershed. However, these developments are required to implement all other UDC water quality measures.

## **Required Determinations**

### *Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs

(OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final 4(d) rule in a manner consistent with these requirements.

### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the

factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). Based on the information that is available to us at this time, we certify that this regulation will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

On February 24, 2014 (79 FR 10236), we published the final determination to list the Georgetown salamander as a threatened species. That rule became effective on March 26, 2014. As a result, the Georgetown salamander is currently covered by the full protections of the Act, including the full section 9 prohibitions that make it illegal for any person subject to the jurisdiction of the United States to take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as an endangered species, without written authorization. It also is illegal under section 9(a)(1) of the Act to possess, sell, deliver, carry, transport, or ship any such wildlife that is taken illegally. Prohibited actions consistent with section 9 of the Act are outlined for threatened species in 50 CFR 17.31(a) and (b). This final 4(d) rule states that all prohibitions in 50 CFR 17.31(a) and (b) will apply to the Georgetown salamander, except regulated activities that are conducted consistent with the water quality protective measures contained in Chapter 11.07 and Appendix A of the Unified Development Code, which would result in a less restrictive regulation under the Act, as it pertains to the Georgetown salamander, than would otherwise exist. For the above reasons, we certify that

the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a final regulatory flexibility analysis is not required.

#### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

(a) This final rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or [T]ribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family

Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

(b) This 4(d) rule promulgates that all prohibitions in 50 CFR 17.31(a) and (b) will apply to the Georgetown salamander, except activities that are conducted consistent with the water quality protection measures contained in Chapter 11.07 and Appendix A of the Unified Development Code, which would result in a less restrictive regulation under the Act, as it pertains to the Georgetown salamander, than would otherwise exist. As a result, we do not believe that this rule would significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required.

### *Takings*

In accordance with Executive Order 12630, this final rule will not have significant takings implications. We have determined that the rule has no potential takings of private property implications as defined by this Executive Order because this 4(d) rule will result in a less-restrictive regulation under the Endangered Species Act than would otherwise exist. A takings implication assessment is not required.

### *Federalism*

In accordance with Executive Order 13132, this final 4(d) rule does not have significant Federalism effects. A federalism summary impact statement is not required. This rule will not have substantial direct effects on the State, on the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government.

#### *Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *Energy Supply, Distribution or Use (Executive Order 13211)*

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking actions that significantly affect energy supply, distribution, and use. For reasons discussed within this final rule, we believe that the rule will not have any effect on energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

#### *Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain collections of information that require approval by the Office

of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

We have prepared a final environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969. For information on how to obtain a copy of the final environmental assessment, see **ADDRESSES**, above.

*Government-to-Government Relationship with Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government- to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal

public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no known tribal lands within the range of the Georgetown salamander.

## **Authors**

The primary authors of this final rule are the staff members of the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## **List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## **Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## **PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

2. Amend § 17.43 by adding paragraph (e) to read as follows:

**§ 17.43 Special rules—amphibians.**

\* \* \* \* \*

(e) Georgetown salamander (*Eurycea naufragia*).

(1) *Prohibitions.* Except as noted in paragraph (e)(2) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 apply to the Georgetown salamander.

(2) *Exemptions from prohibitions.* Incidental take of the Georgetown salamander will not be considered a violation of section 9 of the Act if the take occurs on non-Federal land from regulated activities that are conducted consistent with the water quality protection measures contained in chapter 11.07 and Appendix A of the City of Georgetown (Texas) Unified Development Code (UDC), as endorsed by the U.S. Fish and Wildlife Service.

\* \* \* \* \*

/s/ Stephen Guertin

Dated: 7/28/2015

Acting Director, U.S. Fish and Wildlife Service.

Billing Code 4310–55

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